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Passenger Automobile Average Fuel Economy Standards for Model Years 1989 and 1990; Proposed Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

[Docket No. FE-88-01; Notice 2]

[RIN No. 2127-AB75]

Passenger Automobile Average Fuel Economy Standards for Model Years 1989 and 1990

AGENCY: National Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); notice of public meeting; response to petitions.

SUMMARY: The National Highway Traffic Safety Administration is seeking public comment on whether to reduce the passenger car corporate average fuel economy standards for Model Year 1989, 1990, or both. NHTSA is taking this action to determine whether retaining the 27.5 mpg standard (which is set by statute) would have a significant, adverse effect on U.S. employment or on the competitiveness of the U.S. auto industry. Until recently, the Department had no evidence to support the motion that the 1989 or 1990 standard might have such significant effects. Within the past few weeks, however, NHTSA has received information suggesting that the MY 1989 and 1990 standard could threaten the competitiveness of the U.S. auto industry. In addition, the Department seeks comment on whether the Department will be able to find again that a substantial share of the market made reasonable efforts to achieve the statutory standard. Accordingly, NHTSA is proposing to set the standard at a level between 26.5 and 27.5 mpg.

DATES: *Written Comments:* The agency is providing different comment periods for the proposed MY 1989 and MY 1990 standards. Written comments on the proposed MY 1989 standard must be received on or before September 15, 1988. Written comments on the proposed MY 1990 standard must be submitted by October 28, 1988. An explanation of the abbreviated comment period for the proposed MY 1989 standard is provided in the Supplementary Information section of this notice.

Public Meeting: A public meeting to receive oral comments on the proposed standards for both model years will be held on September 14, 1988, at 9 a.m., at the Department of Commerce Auditorium, 14th Street and Constitution Ave. NW. in Washington, DC.

Effective Date: The proposed amendments would be effective for MYs 1989–90.

ADDRESSES: *Written Comments:* Each written comment on these proposals must refer to the docket and notice numbers set out in brackets underneath "49 CFR Part 531" in the heading of this document and must be submitted (preferably 10 copies) to the Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. Submissions containing information for which confidential treatment is requested should be submitted (3 copies) to the Chief Counsel, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street SW., Washington, DC 20590, and 7 additional copies from which the purportedly confidential information has been deleted should be sent to the Docket Section, at the address given above.

Public Meeting: The September 14, 1988 public hearing will be held at the U.S. Dep't of Commerce Auditorium, Herbert C. Hoover Building, 14th Street and Constitution Ave. N.W., Washington, DC. (The entrance to the auditorium is on 14th Street.)

FOR FURTHER INFORMATION CONTACT: *Questions regarding the public meeting:* Mr. James Jones, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. (202–366–4793). *All other questions:* Mr. Orron Kee, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. (202) 366–0846.

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I. Introduction

For several years, the Secretary of Transportation has been calling public attention to the serious economic dislocations threatened by the law establishing the Corporate Average Fuel Economy (CAFE) program. Among other things, the Department has found, in previous years, that industry actions needed to comply with the statutory standard of 27.5 mpg seriously threatened American jobs. Indeed, the Department found specifically that tens of thousands of U.S. jobs could have been lost, had the fuel economy standard been retrained at 27.5 mpg. Accordingly the Department reduced the standards for Model Years 1986 through 1988, finding that the potential for significant economic harm from the higher standard outweighed the negligible energy savings that could (theoretically) be realized from the higher standard.

One of the most perverse aspects of the CAFE law is its positive incentive to ship U.S. jobs out of this country. The law requires that manufacturers separate their fleets into two categories: a "domestic" fleet and a "not domestically manufactured" (or, import) fleet. In fact, the rules defining "domestically manufactured" are so strict that many cars assembled in the U.S. (including all U.S.-built Japanese models) do not qualify as "domestically manufactured." The law further requires that the CAFE standard be met separately by a manufacturer's "domestic" fleet and its "import" fleet. For U.S. manufacturers, each of which has two fleets under this rule, the two fleets cannot be averaged together for compliance purposes. In contrast, the Japanese companies average their small cars with their largest cars, because they don't have any cars that meet the strict "domestic" content rules. This provision hurts only the U.S. auto makers and U.S. autoworkers—because it encourages the export of U.S. jobs for the sole purpose of affecting the assignment of a model to "import" rather than the "domestic", fleet. Obviously, this result would have *no* impact on the fuel efficiency of the model, but would have significant adverse effects on the employment status of the U.S. autoworkers employed to construct that car model or its parts. In previous fuel economy rulemaking proceedings, the Department found that the 27.5 mpg standard posed a significant threat to U.S. jobs by encouraging manufacturers to ship jobs out of the country solely for CAFE compliance.

In these previous rulemaking decisions, the agency also found that the auto manufacturers had made reasonable plans to achieve the statutory standard, but that these plans had been derailed for reasons outside the control of the manufacturers. Based on new information suggesting that economic dislocations could occur if the statutory standard of 27.5 mpg is retained for MY 1989 and 1990, the agency has opened this proceeding to ascertain the magnitude of the threatened economic dislocations and the reasons for them. The Department is particularly concerned about whether the statutory standard significantly threatens U.S. jobs or the competitiveness of the U.S. auto industry. Finally, the Department is seeking comment on whether the Department will be able to find again that a substantial share of the market made reasonable efforts to achieve the statutory standard.

If the Department decides to amend the standard, the amendment must be set at the "maximum feasible average fuel economy level." Section 502(e) of the Act requires the agency to consider four factors in determining that level: technological feasibility, economic practicability, the effect of other Federal standards on fuel economy, and the need of the nation to conserve energy. Another focus of this proposal is a request for information and comments concerning the maximum feasible CAFE level.

II. Background

A. Corporate Average Fuel Economy Statutory Provisions

In December 1975, during the aftermath of the energy crisis created by the oil embargo of 1973–74, Congress enacted the Energy Policy and Conservation Act (EPCA). One provision of EPCA established an automotive fuel economy regulatory program and was added as a new Title V to the existing Motor Vehicle Information and Cost Savings Act (the Act, 15 U.S.C. 2001 *et seq.*). The program includes corporate average fuel economy (CAFE) standards for passenger automobiles.

Title V specified CAFE standards for passenger automobiles of 18, 19, and 20 mpg, for MYs 1978, 1979, and 1980, respectively. The Secretary of Transportation (as delegated to the NHTSA Administrator) was required to establish standards for MYs 1981–1984. For MY 1985 and thereafter, Title V specifies a standard of 27.5 mpg.

Under the Act, the agency has discretion, in certain circumstances, to amend the 27.5 mpg standard. Section 502(a)(4) provides that the standard for MY 1985 or any year thereafter may be amended to a level which the agency determines is the "maximum feasible average fuel economy level" for the model year in question. In determining maximum feasible, the agency is required by section 503(e) of the Act to consider the following four factors: (1) Technological feasibility; (2) economic practicability; (3) the effect of other Federal motor vehicle standards on fuel economy; and (4) the need of the Nation to conserve energy.

While compliance with fuel economy standards is determined by averaging the various models produced by each manufacturer, enabling them to produce vehicles with fuel economy below the level of the standard if they produce sufficient numbers of vehicles with fuel economy above the level of the standard, manufacturers may not average their imported cars together with their domestically manufactured cars. Instead, manufacturers must meet fuel economy standards separately for their imported and domestically manufactured fleets. (See section 503 of the Act.) Cars are considered to be domestically manufactured if they have at least 75 percent domestic content. Conversely, cars are considered to be imports, or as the statute characterizes them, "not domestically manufactured," if they have less than 75 percent domestic content. One result of this provision is that domestic automakers are unable to take advantage of the higher fuel economy of smaller imported vehicles which they sell, for purposes of CAFE compliance of their domestic fleets.

While a separate fuel economy standard is set for each model year, the Cost Savings Act does not require absolute achievement of the standard by manufacturers within each year. Instead, it allows a shortfall in one year (or years) to be offset if a manufacturer exceeds the standard for another year (or years). Under the Act, as amended by the Automobile Fuel Efficiency Act of 1980, manufacturers earn credits for exceeding average fuel economy standards which may be carried back for three model years or carried forward for three model years. If a manufacturer still does not meet the standard, after taking credits into account, it has committed "unlawful conduct" under section 508 of the Act, and is liable to the Federal government for civil penalties.

In recent years, the Department increasingly has become aware of—and concerned by—the discriminatory effects and adverse impacts of the CAFE program, and of its marginal relevance to *real* fuel economy. On August 5, 1987, the Secretary of Transportation submitted to Congress draft legislation that would repeal the corporate average fuel economy standards for new model years. The bill would also retain and update the Environmental Protection Agency's (EPA) fuel economy labeling requirements, and revise EPA's automotive fuel economy testing procedures to require that results simulate conditions of actual use. The legislation was proposed in light of a number of considerations, including the fact that the energy conservation goals that Congress sought to achieve by the CAFE program largely have been realized. Another is the growing view of economic thought that the decontrol of the price of oil and changes in gasoline prices, rather than CAFE standards, were primarily responsible for the increase in fuel efficiency over the past decade. The nation might well have achieved similar results simply through the natural operation of the market.

Moreover, it is clear that CAFE standards can cause serious economic distortions in the marketplace. For example, while the standards exert pressure on manufacturers to sell a mix of vehicles to meet the required CAFE level, they do nothing to ensure that consumers will want to buy the mix the manufacturers offer. Indeed, if standards are set at too high a level, the manufacturers may be able to meet the standards only by restricting the sale of their larger (domestically produced) vehicles and engines, resulting in the loss of American jobs and less choice for consumers. The law also provides perverse incentives for domestic carmakers to move parts and assembly jobs for larger cars out of the United States, just so those vehicles can be shifted from the "domestic" to the "imported" fleet. Also, CAFE standards place the full-line U.S. automakers at a competitive disadvantage, as compared to other producers who specialize in smaller vehicles. As a result, domestic manufacturers may be forced to restrict sales of their larger, less fuel efficient vehicles. Import manufacturers who are not constrained by the CAFE standards simultaneously are entering this market segment, which long has been dominated by domestic manufacturers. The Secretary noted that there is strong evidence that the market will continue to provide the proper balancing of fuel-efficient vehicles versus other vehicle characteristics such as size, safety, and performance, and concluded that the most sensible public policy is to repeal the CAFE standards program.

Unfortunately, the Congress has not yet taken any action on the Department's legislative proposal. Unless and until the draft legislation becomes law, NHTSA must continue to administer the law as it is currently written, and as it has been construed by the courts. Thus, today's notice is based on the existing law.

B. Setting the 1981–84 Standards

On June 30, 1977, NHTSA published in the **Federal Register** (42 FR 33534) a final rule establishing the MYs 1981–1984 passenger automobile CAFE standards. The selected standards were 22.0 mpg for 1981, 24.0 mpg for 1982, 26.0 mpg for MY 1983 and 27.0 mpg for MY 1984.

As part of establishing the 1981–1984 standards, the agency developed estimates of the maximum feasible fuel economy for each manufacturer for MYs 1981 through 1985. The agency's conclusion at that time was that "levels of average fuel economy in excess of 27.5 mpg are achievable in the 1985 time frame." 42 FR 33552 The agency believed that it was feasible for GM to achieve an average fuel economy level of 28.9 mpg in MY 1985, Ford 27.9 mpg and Chrysler 28.7 mpg. See 1977 Rulemaking Support Paper (RSP), p. 5–38 (Table 5.11). Those levels were based on a number of assumptions, including the ability of manufacturers to maintian a rapid rate of introduction of technology, consumer acceptance of a 10 percent reduction in vehicle acceleration, and significant use of a widespread range of technological options, including weight reduction, improved transmissions and lubricants, reduced aerodynamic drag, reduced accessory losses and reduced tire rolling resistance.

The agency's estimates did not assume a downward mix shift in automobile sizes or the use of diesel engines. The agency concluded that a standard set at a level that required substantial mix shifts would not be economically practicable due to the risk that a signficant number of consumers might defer purchasing new automobiles, resulting in a substantial sales drop. However, these techniques were viewed in the 1977 rule as "constituting a safety margin" for manufacturers in the event that other technological improvements did not result in sufficient CAFE improvements. 42 FR 33545, June 30, 1977.

As to foreign manufacturers, the 1977 RSP projected that all but three of them could improve their average fuel economy levels, without expanded use of diesel engines, sufficiently to meet the 27.5 mpg standard. With fleet fuel economy improvements from additional diesels included in the foreign fleet projections, only one manufacturer, Mercedes, was projected to fall below the 1985 standard.

It should be emphasized that the agency's 1977 estimates were intended to demonstrate the feasibility of achieving the 27.5 mpg standards and not to predict what specific actions the manufacturers would actually take to achieve the standard. The agency's estimates were based on one scenario of what the agency believed manufacturers could do to achieve an average fuel economy level of 27.5 mpg by 1985. Manufacturers were free to pursue other courses of action to achieve the 27.5 mpg fuel economy level.

C. Events from 1977 to 1984

In January 1979, NHTSA presented new feasibility estimates for each manufacturer for MYs 1980 through 1985 in its Third Annual Report to the Congress on the Automotive Fuel Economy Program (44 FR 5742, January 29, 1979). The agency stated that "(o)n balance, the conclusions reached during the 1981–84 rulemaking * * * are similar to those resulting from the most recent assessments. These assessments indicate that all domestic manufacturers can exceed the scheduled standards for each year through 1985." 44 FR 5757.

Between January and May of 1979, NHTSA received a number of submissions from Ford and General Motors on the 1981–1984 fuel economy standards for passenger automobiles asserting that those standards should be reduced. In response to these submissions, the agency published a document entitled "Report on Requests by General Motors and Ford to Reduce Fuel Economy Standards for MY 1981–85 Passenger Automobiles," DOT HS–804 731, June 1979. The report concluded that the standards were technologically feasible and economically practicable and noted that both companies had submitted product plans for meeting the standards. Report, p. 14.

One year later, the Nation was in the midst of another energy crisis, brought on by events in Iran. Gasoline prices were rising rapidly, creating significantly increased consumer demand for small cars. The U.S. city average retail price for gasline rose from 88 cents per gallon in 1979 to $1.22 in 1980. (In 1986 dollars, this increase was from $1.33 in 1979 to $1.63 in 1980.) In light of these changed conditions, the industry announced plans to significantly exceed the 27.5 mpg standard for 1985. Both Ford and GM, as well as Chrysler and American Motors (now a part of Chrysler), indicated that they expected to achieve average fuel economy in excess of 30 mpg for that model year. Product plans submitted to NHTSA by those companies indicated that the projections assumed significant mix shift toward smaller cars and rapid introduction of new technology.

On January 26, 1981, NHTSA published an advance notice of proposed rulemaking (ANPRM) in the **Federal Register** (46 FR 8056) which addressed the issue of passenger automobile fuel economy standards for MY 1985 and beyond. That notice and an accompanying paper entitled "Analysis of Post-1985 Fuel Economy," assumed that manufacturers would achieve their announced average fuel economy goals of over 30 mpg for 1985.

On April 16, 1981, NHTSA published in the **Federal Register** (46 FR 22243) a notice withdrawing the ANPRM. The notice stated that "(t)his action is being taken in recognition of market pressures which are creating strong consumer demand for fuel-efficient vehicles and sending clear signals to the vehicle manufacturers to produce such vehicles. It is expected that the market will continue to act as a powerful catalyst * * *"

Conditions affecting fuel economy changed dramatically after 1981, following completion of decontrol of domestic oil and other external factors increasing available supplies. Gasoline prices did not continue to rise but instead declined over time. This, combined with economic recovery, caused consumer demand to shift back toward larger cars and larger engines. Data submitted to the agency by GM and Ford in mid-1983 indicated that instead of achieving fuel economy well in excess of the 27.5 mpg standard for MY 1985, they would be unable to meet the levels prescribed by the standard.

D. Rulemakings to Amend the MYs 1986–1988 CAFE Standards

In response to petitions from GM and Ford, the agency exercised its discretion and lowered the MY 1986 and MY 1987–88 passenger automobile CAFE standards in two separate rulemakings. (For MY 1986, see 50 FR 40528, October 4, 1985; for MYs 1987–88, see 51 FR 35594, October 6, 1986.) (The agency denied petitions by Mercedes-Benz and GM to amend retroactively the MYs 1984–85 passenger automobile CAFE standards. (See 53 FR 15241, April 28, 1988.))

The rulemaking reducing the MYs 1986–1988 CAFE standards were consistent with the Cost Savings Act and its legislative history which clearly indicate that NHTSA has the authority to reduce fuel economy standards. The determination of maximum feasible

average fuel economy level is made as of the time of the amendment. The agency has emphasized, however, that it could not reduce properly a standard under the Act if a current inability to meet the standard resulted from manufacturers previously declining to take reasonable steps to improve their average fuel economy as required by the Act.

For MY 1986, the agency evaluated the manufacturers' past efforts to achieve higher levels of fuel economy as well as their immediate capabilities. Based on the information received, the agency concluded that Ford and GM, constituting a substantial part of the industry, had taken or planned appropriate steps to meet the 27.5 mpg standard in MY 1986 and made significant progress toward doing so, but were prevented from fully implementing those steps by unforeseen events. The decline in gasoline prices, which began in 1982, had been expected to be temporary and quickly reverse, but instead continued. The agency concluded that, among other things, there had been a substantial shift in expected consumer demand toward larger cars and engines, and away from the more fuel-efficient sales mixes previously anticipated by GM and Ford. The agency's analysis indicated that this shift was largely attributable to the continuing decline in gasoline prices and that the only actions available to those manufacturers to improve their fuel economy in the remaining time for MY 1986 would have involved product restrictions likely resulting in significant adverse economic impacts, including sales losses well into the hundreds of thousands and job losses well into the tens of thousands, and unreasonable restrictions on consumer choice. That action was recently upheld by the D.C. Circuit Court of Appeals as consistent with the provisions of the Act and within the agency's discretion. (*Public Citizen* v. *National Highway Traffic Safety Administration*, 848 F. 2d 256, 264 (D.C.Cir. 1988)

The agency also lowered to 26.0 mpg the standards for MYs 1987–88. In this case as well, the agency determined that manufacturers had made reasonable efforts at compliance, but that these efforts had been overtaken by unforeseen events, whose effects could not be overcome by available means within the time available. NHTSA stated: "* * * both GM and Ford have continued to make significant technological improvements in their fleets and have had reasonable plans to meet CAFE standards. In a situation where unforeseen events, including changes in consumer demand or changes in the competition's product offerings, overtake a manufacturer's reasonable product plan, the agency does not consider it consistent with the Act to "hold" the manufacturer to carrying out a product plan that has become economically impractical." (51 FR 35611)

In evaluating the reasons for GM's and Ford's declining MYs 1987–88 CAFE projections, the agency noted that the companies appeared to be applying the same technologies as planned in late 1983. In the case of GM, NHTSA stated that the two major reasons for the decline in GM's CAFE projections were net engine and model mix shifts, and engine and transmission improvement programs not yeilding projected gains. The great majority of the factors reducing Ford's CAFE projections were due to net shifts in projected sales for models and engines, engine efficiency improvements not yielding projected gains, and new models not meeting initial weight targets. The agency thus concluded that the major reasons for the decline in both GM's and Ford's MYs 1987–88 CAFE projections were largely beyond those companies' control. (51 FR 35610) NHTSA's analysis further indicated that the only actions then available to those manufacturers to raise the fuel economy in their domestic fleets to 27.5 mpg in MYs 1987–88 would involve a combination of (1) product restrictions likely resulting in significant adverse economic impacts, including substantial job losses and sales losses and unreasonable restrictions on consumer choice, and (2) transfer of the production of large cars outside of the United States, thereby costing American jobs, while having absolutely no energy conservation benefits. (51 FR 35594)

III. Petitions To Amend the Model Year 1989 and 1990 CAFE Standards

The agency received five petitions to amend the passenger car CAFE standards for MYs 1989 and 1990. All petitions seek rulemaking to lower those CAFE standards, with four of the petitions requesting a lower standard based on the reported prospective inability of automobile manufacturers to meet the statutorily set standard of 27.5 mpg. The fifth petition requests a lower standard based on the contention that the CAFE program has caused an increase in motor vehicle fatalities. A brief summary of each petition follows.

A. Manufacturer Petitions

Automobile Importers of America, Inc.

On February 12, 1988, the Automobile Importers of America, Inc. (AIA) petitioned the agency to reduce the passenger automobile CAFE standards to 26.0 mpg for MYs 1989 and 1990. (Docket No. PRM–FE–011; supplemented May 25, 1988, Docket No. PRM–FE–011A) AIA represents 19 automobile importers, including BMW, Fiat/Alfa Romeo, Honda, Hyundai, Isuzu, Jaguar, Mazda, Mitsubishi, Nissan, Peugeot, Porsche, Renault, Rolls-Royce, Saab-Scania, Subaru, Suzuki, Toyota, Volvo and Yugo. The basic thesis of the AIA petition is that the 27.5 mpg CAFE standard for MYs 1989 and 1990 is technologically infeasible and economically impracticable under Title V, because it will unduly restrict consumer choice. AIA states that there is no evidence that the situation which caused NHTSA to amend the MYs 1986–1988 CAFE standards, i.e., high consumer demand for better performing cars with more features, will not continue for 1989 and 1990 as it has in previous years.

The focus of the AIA petition is the fuel economy abilities of the single- and limited-line manufacturers, who, according to AIA, lack one crucial advantage of the American full-line manufacturers. They do not have a wide variety of sizes of smaller cars to average against their larger, higher performance cars. AIA also argues that these manufacturers have been at the forefront of implementing technological advances, including those that improve safety and fuel economy. However, AIA states that many of the safety advances pioneered by these manufacturers, such as antilock brakes and airbags, have a negative effect on fuel economy.

In addition, AIA makes several other points in support of its request to lower the standards. First, AIA states that the resultant savings from a CAFE standard of 27.5 mpg compared to those from a standard of 26.0 mpg would be equal to approximately one-tenth of one percent of all motor vehicle fuel consumed in the United States during 1986. Second, the group argues that the goals of EPCA have already been met, because the entire fleet of automobiles exceeds 27.5 mpg. Third, AIA says that the single-line or limited-line manufacturer is at a disadvantage with too-stringent CAFE standards. Since such a manufacturer does not sell smaller cars, it does not have the option of refusing to sell larger cars or of providing incentives for smaller cars.

Austin Rover

Austin Rover Group Limited petitioned the agency on March 8, 1988, to reduce the passenger automobile CAFE standards to 26.0 mpg for MYs

1989 and 1990. Austin Rover, in collaboration with Honda Motors, produces the Sterling automobile for sale in the United States. Austin Rover's basis for petitioning is that it is a single-line manufacturer of "executive class" automobiles, with no smaller models to offset the lower fuel economy of the executive class automobiles. Austin Rover's petition includes a listing of the various engine and vehicle parameters said to have been optimized for fuel economy. (Austin Rover is not a member of AIA.)

Mercedes-Benz of North America, Inc.

On March 16, 1988, Mercedes-Benz of North America (Mercedes) petitioned the agency to reduce the passenger automobile CAFE standard for MY 1989 and later model years to 22.0 mpg. Mercedes believes that this is the maximum achievable level, in the near term by most limited-line manufacturers which operate in a restricted market segment. (Mercedes is not a member of AIA.)

Mercedes' main argument is that limited-line manufacturers such as Mercedes have taken all steps necessary to reduce the fuel consumption of the vehicles they produce, and that the source of their inability to comply is the narrow market which they serve. Mercedes urges NHTSA, in setting the new CAFE standard for model year 1989 and beyond, to recognize that a manufacturer's ability (or failure) to comply depends primarily on the nature of consumer demand for its products.

Mercedes urges the agency to lower the standard, stating that NHTSA should not keep the standard at 27.5 mpg when it knows that the standard cannot be achieved by limited-line manufacturers such as Mercedes. Mercedes says that a CAFE standard set above the capabilities of a particular segment of the market is an anti-competitive regulation and strongly suggests that, accordingly, NHTSA has a statutory obligation to revise the standard for MY 1989 and beyond.

General Motors

On May 17, 1988, General Motors Corporation (GM) submitted a petition requesting the agency to amend the MYs 1989 and 1990 passenger car CAFE standards to the maximum feasible level. The GM petition did not provide specific data to support its request; instead, the petition indicated support of the petitions previously filed, endorsed the opening of rulemaking to establish the maximum feasible level for MYs 1989 and 1990, and referred the agency to GM comments submitted in connection with the AIA petition, and in connection with the agency's amendment of the MY 1986 and MYs 1987–88 passenger car standards.

B. CEI Petition

Competitive Enterprise Institute

The Competitive Enterprise Institute (CEI) petitioned the agency on April 11, 1988, to set the passenger automobile CAFE standard for MYs 1989 and 1990 at 24.0 mpg. CEI is the only petitioner whose request to reduce the CAFE standards is not based on arguments that some manufacturers currently are unable to meet the standards. Instead, CEI contends that the CAFE program is causing an increase in vehicle occupant fatalities and that a CAFE of 27.5 mpg for MY 1989 will result in increased deaths of 2,200 to 3,900 over the life of that year's fleet. Further, CEI asserts that neither Congress nor the agency consciously considered the possible adverse safety side effects of CAFE standards, and that the agency is therefore without power to adopt standards until it makes a specific finding that the savings in fuel is worth the increase in highway fatalities. CEI contends that 24.0 mpg is what the average new car fuel economy would be if there were no CAFE regulatory program, and uses this assumption as the basis for promoting 24.0 mpg as the appropriate level to set.

IV. Summary of Agency Response to Petitions

In reviewing the manufacturers' petitions to lower the CAFE standards for MYs 1989–90, the agency has attempted to apply the analytical approach it spelled out in the decisions to amend the standards for MYs 1986–88. Accordingly, the agency published a request for comments relating to the petitions (53 FR 8668, March 16, 1988) and followed up with specific information requests to several manufacturers. The purpose of this activity was to obtain information to allow the agency to assess the reasonableness of the manufacturers' efforts to achieve the 27.5 mpg statutory standard and to ascertain the maximum feasible fuel economy levels for MYs 1989 and 90. The initial responses to the notice and those requests were not sufficient to permit the agency to attempt to assess the reasonableness of manufacturer efforts to achieve the 27.5 mpg statutory standard. Recently, however, GM supplied information to NHTSA that is sufficient to permit the agency to go forward with this proposal. (All publicly available material supplied by GM is in the docket in this proceeding.) For purposes of a possible final rule, the agency will complete its analysis of GM's submissions, both as to whether they are sufficient for the agency to make a determination concerning the reasonableness of that company's efforts and, if so, whether GM in fact made reasonable efforts to meet the statutory standard for MYs 1989–90. This proposal will permit manufacturers and others to present data, views and arguments about retaining or reducing the standard. Accordingly, it requests information and comment from all interested persons on manufacturers' reasonable efforts and maximum feasible fuel economy levels.

As the agency set forth clearly in the decisions to reduce the MYs 1986–88 standards, NHTSA does not believe it can properly lower the statutorily set standard of 27.5 mpg unless it first can make a determination that manufacturers have made reasonable efforts to attain the standard. If the agency makes such a determination in this instance, it will analyze the industry's maximum feasible CAFE level, and adopt a standard in the range of 26.5 mpg to 27.5 mpg. As discussed more fully below, NHTSA believes the lower end of the range, 26.5 mpg, is appropriate given the agency's longstanding interpretation of the statutory requirement that standards be set at the "maximum feasible" level, taking industrywide considerations into account, and the CAFE projections and recent CAFE performance of manufacturers whose sales (individually or combined) represent a substantial share of the market. The high end of the range, 27.5 mpg, represents the current level of the standard.

With regard to CEI's petition, the agency seeks comment on the issues raised in the petition, as discussed later in this preamble.

V. Agency Analytical Approach in Amending Standards

When it adopted EPCA, Congress established a long-term obligation on the part of manufacturers to bring their fleets into compliance with the 27.5 mpg standard and provided for civil penalties for the failure to do so. While Title V provides no express guidance concerning the appropriate circumstances for the exercise of its discretion to amend, the agency has been guided by the purposes of EPCA and by the statutory scheme of Title V. As the agency has explained in its rulemaking actions lowering the MYs 1986–88 standards, it believes that the exercise of its discretion consistent with those factors is required by the

provision in the Administrative Procedure Act stating that an agency's discretionary decision will be set aside if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." (5. U.S.C. 706(2)(A))

For petitions requesting a reduction in an existing CAFE standard, the agency has stated previously that it would not lower the 27.5 mpg standard unless the agency could conclude both that the manufacturers have made reasonable efforts to comply with the prescribed standard *and* that the 27.5 mpg standard is above the "maximum feasible" level for the industry.

In administering the fuel economy program, NHTSA must take into account "industrywide considerations". This phrase also has been discussed in several previous documents. In its petition to lower the MYs 1989–90 standards, Mercedes proffered another interpretation of this term, to include European manufacturers, as a significant segment of the industry. The issue of industrywide considerations has been addressed on many previous occasions, and most recently in the April 26, 1988 agency denial of petitions to amend retroactively the MYs 1984 and 1985 passenger automobile CAFE standards. The agency reiterates its position below:

The CAFE statute requires that, for each model year, there be a single standard for all passenger automobile manufacturers not exempted under section 502(c). Section 502 does not state expressly whether the concept of feasibility is to be determined in setting passenger automobile standards on a manufacturer-by-manufacturer basis or on an industrywide basis. The agency has therefore long interpreted this section in a manner that is consistent with the legislative history of Title V. The conference report accompanying Title V states, with respect to determining the maximum feasible average fuel economy level:

Such determinations should therefore take industrywide considerations into account. For example, a determination of maximum feasible average fuel economy should not be keyed to the single manufacturer which might have the most difficulty achieving a given level of average fuel economy. Rather, the [Administrator] must weigh the benefits to the nation of a higher average fuel economy standard against the difficulties of individual automobile manufacturers. Such difficulties, however, should be given appropriate weight in setting the standard in light of the small number of domestic automobile manufacturers that currently exist, and the possible implications for the national economy and for reduced competition association (sic) with a severe strain on any manufacturer. However, it should also be noted that provision has been made for granting relief from penalties under section 508(b) in situations where competition will suffer significantly if penalties are imposed. (S. Rep. No. 94–516, 94th Cong., 1st Sess. 154–5 (1975))

This language expresses two themes: first, a Congressional goal of improved fuel economy for the nation and second, fuel economy standards which are set at the maximum feasible level. NHTSA has construed this language many times. For example, as the agency stated in the 1977 notice establishing the MYs 1981–84 standards for passenger automobiles, Congress did not intend that standards simply be set at the level of the single least capable manufacturer. Setting standards in that fashion would have vitiated the CAFE program. This point can be illustrated by considering the effects of setting a standard at 19.0 mpg, based on the capability of a single manufacturer with a market share of less than one percent. Such a standard would have no possible impact on the balance of the manufacturers which, together produce more than 99 percent of all cars and have higher average fuel economies.

Since this initial interpretation, the agency has expanded its position, noting that the statute contemplated that standards should not be set above the capability of manufacturers whose sales represent a substantial share of the market. (50 FR 29912, 29923) This would apply either to a single larger such manufacturer or to a combination of smaller manufacturers constituting together a substantial share of the market. In the final rule reducing the MYs 1987–88 standards, the agency concluded that the particular compliance difficulties of several of the European manufacturers, whose combined market share is relatively small, was not legally sufficient to justify a standard set for below the capabilities of the other manufacturers. (51 FR 35617)

The agency does not believe that Congress intended the CAFE standards to be governed by the abilities of a single, narrow segment of the industry, such as the projected 0.8 percent market share of Mercedes in MY 1988, or even the 6.7 percent combined market share of European manufacturers in that model year. (It also should be noted that the 6.7 percent reflects all European manufacturers; 3.2 of those 6.7 percentage points represent European manufacturers that already achieve or exceed 27.5 mpg, i.e., Volkswagen/Audi and Yugo.)

This statement is not intended as criticism of those manufacturers for not achieving 27.5 mpg CAFE, or as lack of appreciation for the difficulty caused to them by the CAFE program. On the contrary NHTSA believes that regulation of fuel economy by a single standard to be met on a corporate average basis—as required by Title V—is unfair to many manufacturers which produce larger cars (including full-line U.S. manufacturers as well as limited-line European producers). The burdens of the program fall entirely on the manufacturers which produce larger or higher performance cars, especially if they also do not have sufficient smaller or lower-performance cars that can be averaged into the same fleet. Other manufacturers, including a number of major importers, are, as a practical matter, not required to take any actions to improve fuel economy or change product offerings. Moreover, these other manufacturers can produce smaller and mid-size cars that compete against those of the full-line manufacturers, without concern as to how much fuel economy technology is incorporated in the cars. This results in a potential cost advantage for these manufacturers—and a competitive disadvantage for the companies that also produce larger cars. This overall issue is one of the reasons NHTSA has recommended repeal of the CAFE program. Unfortunately, the Act does not permit the agency to set the standard based on the discriminatory impact on a small portion of the market, even though the agency is keenly aware of the practical problems it presents to many manufacturers.

Clearly, NHTSA's decade of consistent interpretation of the statutory scheme cannot be abandoned without good cause, and the agency is not persuaded that Mercedes' petition demonstrates that the agency's consistent interpretations are erroneous. While the agency appreciates the frustration of the limited-line manufacturers which believe that they have achieved their own individual maximum feasible levels of fuel economy and still fall short of the CAFE standard, it notes that the manufacturers are pursuing an administrative solution to a legislative problem. These manufacturers really are alleging that they can *never* meet the statutorily set standard of 27.5 mpg, due to the market segment in which they compete. This, however, is inherent in a statutory scheme in which single standards must be set on the basis of the entire industry, but met by individual manufacturers. In

this case, the appropriate solution to the dilemma faced by these manufacturers can be obtained only from Congress, not from NHTSA.

NHTSA believes that the approach regarding "industry-wide" considerations used in its determinations of "maximum feasible" also is appropriate in its determination of reasonable efforts. Accordingly, the agency believes that it is inappropriate to base a determination of reasonable efforts or maximum feasible level solely on any market segment which does not represent a substantial share of the industry. For this reason, in today's analyses, the agency principally considered the efforts of Ford and GM, since either of their sales represents a substantial share of the market.

VI. Reasonable Efforts Analysis

A key issue in deciding whether to exercise its discretion to amend the statutorily set CAFE standard for passenger automobiles of 27.5 mpg is a determination by the agency that manufacturers have made reasonable efforts to meet the standard. The agency has explained its reasonable efforts analysis in several previous documents, including the rulemakings lowering the MY 1986 and MYs 1987–1988 passenger automobile CAFE standards and the document denying the petitions by Mercedes and GM to amend the MY 1984 and 1985 passenger automobile CAFE standards. (For MY 1986, see 50 FR 40528, October 4, 1985; for MYs 1987–1988, see 51 FR 35594, October 6, 1986; for the petition denial for MYs 1984–1985, see 53 FR 15241, April 28, 1988.) Because this determination is critical to the agency's decision whether or not to amend the CAFE standards for MYs 1989 and 1990, the agency repeats its rationale below.

The agency sees the determination of reasonable efforts as a necessary step to amending a given year's CAFE standard. Since Title V imposed a long-term obligation on manufacturers to achieve a 27.5 mpg fuel economy level, the agency could not properly exercise its limited statutory discretion to amend the standard if the current inability to meet the standard resulted simply from manufacturers previously declining to take steps needed to improve their average fuel economy as required by the Act. Therefore, the agency must evaluate the manufacturers' past efforts to achieve higher levels of fuel economy, as well as their current capabilities.

The agency's evaluation of the reasonableness of manufacturer efforts is not only a prudent but also a necessary step. To reduce a standard notwithstanding the absence of reasonable efforts would be an abuse of discretion i.e., beyond the agency's limited administrative authority under the Act. In its recently-issued opinion upholding NHTSA's reduction of the MY 1986 CAFE standard for passenger automobiles and citing approvingly the "reasonable efforts" test, the Court of Appeals for the D.C. Circuit said that "(l)owering the standard whenever the larger manufacturers assert current inability to meet that standard would, without doubt, completely vitiate the statutory scheme." *Public Citizen* v. *National Highway Traffic Safety Administration*, 848 F. 2d 256, 264 (D.C.CIR. 1988).

In reviewing the current requests to lower the standard, the agency needs to analyze the statements and actions of the manufacturers particularly carefully, in view of the amount of time which has passed since the events which led to the reduction of the MYs 1986–88 CAFE standards for passenger automobiles (i.e., the unexpected decline in gasoline prices during the early 1980's, leading to increased consumer demand for larger, more powerful, less fuel-efficient vehicles). The significance of the increasing length of this interval of time was noted in *Center for Auto Safety, et al.* v. *Thomas*, a recent case considered by the full D.C. Circuit Court sitting *en banc* concerning EPA's adjustments to the formula for computing manufacturers' actual CAFE levels. In that case, one-half of the evenly-split court observed: "Whatever the barriers to changing MY 1987 and 1988 vehicles as of August 20, 1985, it is uncontested that, MY 1990 and MY 1991, the auto manufacturers could have redesigned their vehicle offering to enhance fuel economy." 847 F. 2d 843, 858 (D.C.Cir. 1988) (per curiam).

In evaluating the manufacturers' past efforts to achieve compliance with a standard of 27.5 mpg consistent with section 502(e) of the Cost Savings Act, and as noted in the two previous rulemakings lowering the 27.5 mpg standard, the agency does not consider it appropriate to judge each and every manufacturer product action by 20–20 hindsight. Instead, the agency reviews the manufacturers' fuel economy efforts in light of "the information available to manufacturers at the time product decisions were being made."

For MY 1986, and again for MYs 1987–88, the agency determined that GM and Ford had plans adequate to meet the 27.5 mpg standard, but that these plans were overtaken by unforeseen events in the early 1980's. The agency identified a number of factors which led to lower than expected CAFE levels, including the dropping price of gasoline and a related increase in expected consumer demand for larger and more powerful cars. The agency concluded that the manufacturers did not have time to offset the impact of these unexpected events by developing and implementing supplementary or alternate plans for meeting the CAFE standard of 27.5 mpg for MYs 1986–88.

The agency also noted in both the MY 1986 rulemaking and the MYs 1987–88 decision that Title V contemplates that manufacturers would have to adopt intensified and/or supplementary methods of compliance in the event that previous plans were unsuccessful. The fact that adequate plans had been overtaken by unforeseen events in the early 1980's was only a temporary justification for not achieving the long-term 27.5 mpg CAFE goal set by Congress. The agency noted in these previous determinations that in view of the statutory program of mandatory maximum feasible standards:

> Manufacturers had an obligation to take whatever steps were necessary consistent with the factors of section 502(e). (My 1986 final rule, 50 FR 40528)
>
> On the other hand, as it becomes apparent that additional application of technology, such as further penetration of front-wheel drive or additional use of material substitution, is necessary to meet CAFE standards, manufacturers must initiate efforts to redesign and replace their older cars as necessary to meet such standards. (51 FR 35594, 35611)
>
> The agency also emphasized that while changes in product plans which may, as an unintended effect, reduce CAFE, are consistent with the statutory criteria to the extent that they reflect changes in what is economically practicable, manufacturers recognizing the consequences of such changes must then pursue additional means, consistent with the factors of section 502(e), to meet the standards. (MY 1987–88 rulemaking, referring to and affirming the analysis in the MY 1986 rulemaking, 51 FR 35594, 35600)

Given the passage of time since those unforeseen events in the early 1980's, coupled with the agency's understanding of traditional auto industry leadtimes to introduce new technologies or new vehicles, the agency could not reasonably base an exercise of its discretion to amend the MY 1989–90 standards on the same set of facts that supported the reduction of the MY 1986–88 standards. The agency will need to know whether, and to what extent, the industry as a whole made new reasonable plans to comply with the 27.5 mpg standard after the unanticipated events of the early 1980's derailed the previous plans.

To help it assess the reasonableness of manufacturer efforts, the agency

published a fuel economy questionnaire in the Federal Register (March 16, 1988, 53 FR 8668) and mailed copies of the questionnaire to nine manufacturers, both domestic and import. NHTSA subsequently sent follow-up questions to six manufacturers. The questions asked for, among other items, specific explanations of what events had occurred or circumstances had changed to create a compliance problem now. The agency asked manufacturers to provide a description of specific actions taken to achieve 27.5 mpg in MY 1989 and beyond, the impact of those actions, and why the original assessment of these actions is no longer valid.

The initial responses did not provide sufficient information for NHTSA to attempt to assess the reasonableness of manufacturer compliance efforts. However, in early August, GM (which constitutes a substantial share of the industry) provided a considerable amount of additional information and arguments on this issue, the public version of which is in the docket of this proceeding. The agency has not completed its analysis of the new GM materials. However, NHTSA has concluded that GM provided sufficient information for the agency to go forward with rulemaking, including seeking public comment on GM's arguments. As indicated above, for purposes of a possible final rule, the agency will complete its analysis of GM's submissions, both as to whether they are sufficient for the agency to make a determination concerning the reasonableness of that company's efforts and, if so, whether GM in fact made reasonable compliance efforts under the statute. Of course, all other submissions and arguments received during the comment period will be analyzed as well.

GM's arguments can be summarized as follows. That company states that at all times it has made plans to comply with the legislated 27.5 mpg standard, but those plans have been overtaken by unforeseen events beyond its control. According to GM, just as events in the early and mid-1980's overwhelmed its expectation that it would meet the 27.5 mpg standard in 1986–88, similar events, including an uprecedented precipitous 28 percent drop in gasoline prices over the 1986 model year (which was in addition to a 27 percent drop in gasoline prices spread between 1981 and 1985), coupled with radical changes in the competitive environment that characterized the mid- and late 1980s, have overtaken its plans for the 1989–90 time frame. More specifically, GM argues the following:

1. GM consistently planned for compliance with the 1989–90 standards. Immediately after the 28 percent drop in gasoline prices over the 1986 model year, GM could not forecast CAFE compliance without plant closings and layoffs. As prices stabilized at the lower levels, subsequent compliance planning called for long-term compliance through a continued aggressive presence in the fuel-economy conscious segments in the market and introduction of more fuel-efficient and better performing powertrains. However, given the magnitude of the gasoline price drop and the need to assure long-term competitiveness by responding to anticipated changes in consumer expectations, GM also forecast the need for some limited market-forcing actions to achieve compliance over the intermediate term, including 1989 and 1990.

2. Compliance actions were successfully implemented. In the 1986 to 1988 period, GM's compliance efforts were rewarded by a continually improved CAFE. These efforts included, for example, continued introduction of new powertrains like the 16-valve QUAD IV and 3800, and new production platforms like the Beretta and Corsica. For 1989, GM is introducing the 3300 engine which is expected to have better driveability and be more fuel efficient than its 3.0L predecessor. Additionally, GM has continued to maintain an aggressive competitive presence in the fuel-economy conscious segments of the markets.

3. Unexpectedly high CAFE levels achieved by GM in recent years result from temporary or one-time aberrations and should not be viewed as representing a new " base" or trend for future year performance. The success, which exceeded expectations, was derived in part from unanticipated fuel economy performance on EPA tests that cannot reasonably be forecast to be repeated in future model years. Other sources of aberrations from long-term expectations included an extented 1988 model year for the Beretta and Corsica which alone accounts for an estimated 0.1 mpg in MY 1988 CAFE performance. Also, beyond these aberrations, there is a downside to GM's unexpectedly high CAFE. One contributing element has been a lower than forecast level of sales of midsize, larger and luxury models owing in part to downsizing and small engine programs that, in GM's view, may have been too agressive given recent gasoline prices. This has had a very real cost in lost employment at plants like Detroit-Hamtramck that have barely sufficient demand for one shift of production of E/K bodies (e.g., Buick Riviera). Looking to the future, GM programs hope to increase sales of these vehicles and restore employment with restyling and driveability improvements, albeit while trying to minimize the CAFE penalty.

4. Changing circumstances render current 1989–90 plans impracticable. As GM entered the 1988 model year, it began to appear that previously forecast 1989 and 1990 compliance actions were no longer likely to be economically practicable risks, with GM domestic U.S. passenger car market share reduced 6.1 points from the 1986 model year. For example, previously anticipated potential market forcing actions began to appear impracticable with unexpected volume declines that led to the idling of the Leeds, Missouri, J-car assembly facility and a several month layoff of the Framingham, Massachusetts, A-car assembly facility—both despite incentive programs and attractive 1988 pricing for those vehicles. Moreover, the intensified competition now expected from foreign manufacturers and other factors leaves no room for product compromises previously thought to be acceptable.

5. GM is pursuing strategies for future compliance. Plans now under management review are expected to yield compliance with the 27.5 mpg standard in the future.

GM provided a variety of supporting materials, including explanations of why its CAFE projection declines from MY 1988 to MY 1989 and from MY 1989 to MY 1990, why it achieved higher than projected CAFE levels for MY 1986–88, and why its MY 1989–90 CAFE projections have decreased over time; discussions of compensating actions to improve 1989 CAFE after its July 1986 projection that it likely would be below 27.5 mpg, gasoline price effects on CAFE, technology improvements and cost effectiveness, and technology update; the results of a survey related to consumer demand for performance; and information about its 1989 and later model year compliance plan, including a discussion of the impacts of product restrictions, characterized by that company as "one means of assuring compliance at the cost of jobs, consumer choice and national economic harm," and its CAFE compliance planning from 1986 to the present.

NHTSA notes that Ford also provided new information in August 1988 concerning reasonable efforts. However, the information provided was insufficient for the agency to analyze whether that company made reasonable efforts to achieve 27.5 mpg in MYs 1989–

90. In particular, the agency does not have sufficient information to analyze the timing of when Ford first realized that its product plans might not result in 27.5 mpg CAFE and what compensating actions that company initiated or considered at and since that time to improve its CAFE. Depending on the comments that Ford may submit in response to this notice, the agency may, of course, be able to make such a determination for purposes of a possible final rule.

In an earlier submission, Ford indicated that its compliance with the statute would be achieved by using credits earned by exceeding the standard in other years. NHTSA notes that *if* that company decided not to make efforts to achieved 27.5 mpg in MYs 1989–90 in light of credits from other years, such a decision would be perfectly acceptable under the statute. However, if a manufacturer chooses, in light of the flexibility offered by the credit provisions, not to make the reasonable efforts necessary to achieve the level of a standard for a particular model year, it would be clearly inconsistent with the statutory scheme for the agency to then exercise its discretion to lower the standard solely on the basis of that manufacturer's inability to meet the standard.

In analyzing whether manufacturers made reasonable efforts, the agency is attempting to answer the questions which follow. NHTSA notes that manufacturers have already provided information relevent to some of the questions, as well as to some of the questions which appear later in this notice. The agency is continuing to analyze those manufacturer submissions. Copies of the manufacturer submissions are in the public docket (Docket FE–88–01, Notice 1, or Docket PRM–FE). (Information subject to a claim of confidentiality is not included in the docket versions.) NHTSA invites interested persons to submit any information which would aid the agency in answering those questions, and encourages manufacturers to expand on prior submissions if doing so would more fully address the issues raised in this notice.

1. In considering a possible reduction in the MYs 1989–90 standards, how should the agency evaluate the sufficiency of manufacturer efforts to meet the standard? If manufacturer plans are found to have been reasonable, what additional actions should be expected of them, once compliance difficulties are evident? Should the agency consider a second round of investments or product decisions to be "economically practicable" or otherwise compelled by the statute within the timeframe in question?

2. NHTSA requests information and comments concerning the plans developed by manufacturers to achieve 27.5 mpg for MY 1989–90 *after* the unexpected gasoline price reductions of the early to mid-1980's, particularly that of 1986.

3. All full-line manufacturers projected exceeding 27.5 mpg for MY 1989–90 as recently as October 1985. The agency seeks information about what changed since those projections were made, leading to lower projections for MYs 1989–90.

4. For manufacturers which once expected to achieve or exceed 27.5 mpg in MYs 1989–90 but no longer project doing so, the agency requests detailed information concerning the timing of when a possible shortfall was first recognized, the reasons for the shortfall as compared with the earlier projections, and what compensating actions were implemented, formulated, and/or considered since that time to improve CAFE. What happened to any such plans in the intervening time? If plans were formulated but not implemented, why not?

5. How is leadtime relevant to evaluating the sufficiency of manufacturer efforts to meet the standard? NHTSA notes that if a manufacturer recognized a possible shortfall in mid-1986 for MYs 1989–90, there would have been more than two years of leadtime for MY 1989 cars and more than three years of leadtime for MY 1990 cars. Was this sufficient leadtime to improve CAFE by additional technological improvements for MY 1989 and/or MY 1990? In addressing this issue, please discuss the leadtimes for making various technological changes, both for existing cars and as part of new car designs. NHTSA notes with respect to this issue that an August 15, 1988 *Automotive News* article reported that GM "says it has found a new way of developing products in as little as three years instead of the usual five years from first design rendering to Job One." Could a manufacturer have designed an all-new car, as of mid-1986, for MY 1990? If there were sufficient leadtime for MY 1989 and/or MY 1990 to make additional fuel-economy-enhancing technological improvements (whether for existing cars or as part of new car designs) and yet those changes were not made, how should the agency assess the reasonableness of not making such changes?

6. In comparing the largest domestic manufacturers, the agency notes that Ford's CAFE is currently below that of GM. For MY 1988, Ford projects CAFE of 26.4 mpg, while GM projets 27.6 mpg. What accounts for this difference? The agency seeks comments on the significance, if any, of this difference, as well as information to help the agency understand the reasons for the difference.

7. Ford's CAFE has remained relatively flat for several model years and is projected to continue to do so. What relevance, if any, does this have in analyzing whether Ford made reasonable efforts to achieve 27.5 mpg for MY 1989–90?

8. GM's MY 1988 Mid-Model Year Report projects a CAFE level of 27.6 mpg. Why is GM's CAFE projected to decline in MYs 1989–90? What relevance, if any, does this have in analyzing whether GM made reasonable efforts to achieve 27.5 mpg CAFE in MYs 1989–90?

VII. Elements of Setting a Standard

The CAFE statute requires that the agency set a standard at the "maximum feasible level", which consists of four factors: Economic practicability, technological feasibility, the need of the Nation to conserve energy, and the effect of other Federal standards. The agency has explained and weighed these factors each time it has adopted or amended a CAFE standard.

A. Need of the Nation To Conserve Energy

Since 1975, when the Energy Policy and Conservation Act was passed, this nation's energy situation has changed significantly. Oil markets were deregulated in 1981, permitting consumers to make choices in response to market signals and allowing the market to adjust quickly to changing conditions. The U.S. Strategic Petroleum Reserve (SPR) was built to ensure a supply of oil during any major supply disruption. In June 1988, the SPR contained 550 million barrels of oil, stored principally in underground caverns, that could be pumped back to the surface if needed.

1. Petroleum Imports and Prices

The United States imported 15 percent of its oil needs in 1955. The import share had reached 36.8 percent by 1975, and peaked at 46.4 percent in 1977, at a cost of $71 billion (stated in 1988 dollars). While the import share of total petroleum supply declined after that year, the cost continued to rise to a 1980 peak level of $99 billion (1988 dollars).

By 1985, the import share had declined to 28.7 percent at a cost of $52 billion (1986 dollars). In addition, imports from OPEC sources declined through 1985, from a high of 6.2 MMB/D and 70.3 percent of all imports in 1977 to 1.8 MMB/D barrels per day and 36.2 percent of imports in 1985.

Since 1985, the import share of petroleum supply has been increasing. Between 1985 and 1986, net imports rose from 28.7 percent of the U.S. petroleum supply to 34.6 percent. In 1987 that figure was 37.1 percent, and for the first six months of 1988, net imports accounted for 38.1 percent of total supply. Due to sharply lower petroleum prices, however, the value of imports declined from 1985 to 1987, from $52 billion to $43 billion (1986 dollars).

Imports from OPEC sources have also increased. Between 1985 and 1986, imports from OPEC rose from 36.2 percent of all imports to 45.6 percent. In 1987 that figure was 45.8 percent, and for the first five months of 1988, imports from OPEC accounted for 46.4 percent of all imports.

2. Continued Need for Progress

Despite the progress which has been made, both within and outside the transportation sectors of the economy, the current energy situation and emerging trends point to the continued importance of oil conservation. Oil continues to account for well over 40 percent of U.S. energy use, and 97 percent of the energy consumed in the transportation sector. While the U.S. is the second-largest oil producer, it contains only four percent of the world's proved oil reserves. Moreover, proved reserves have declined from a peak of 39.0 billion barrels in 1970 to 26.9 billion barrels in 1986.

According to 1987 Energy Information Administration (EIA) projections, domestic production is expected to decline from 10.0 MMB/D in 1987 to between 8.3. and 9.3 MMB/D in 1995 and between 7.9 and 9.1 MMB/D in 2000, depending on the price of oil. (Data available for the first six months of 1988 indicate domestic production at 9.94 MMB/D.) Net imports are projected to increase from 5.9 MMB/D in 1987 to between 7.4 and 10.5 MMB/D in 1995 and between 7.6 and 11.7 MMB/D in 2000. Thus, as a percentage of total U.S. petroleum use, EIA expects imports to rise from a 1987 level of 37 percent to between 44 and 56 percent of total supply in 1995 and between 46 and 60 percent in 2000. NHTSA notes, however, that future projections about petroleum imports are subject to great uncertainty. For example, the EIA's 1977 Annual Report to Congress projected that net oil imports by the U.S. would, in the "reference case", reach 11 MMB/D by 1985. Net imports in 1986 actually were 5.4 MMB/D, less than half the level predicted in 1977.

The level of oil imports remains an issue for the nation as a whole. In 1987, the U.S. imported $411.3 billion worth of goods and exported $257.6 billion, resulting in a deficit of $153.7 billion. To the extent that oil imports remain steady or decrease, instead of increasing, there is a positive effect on the nation's balance of trade problem.

In March 1987, the Department of Energy submitted a report to the President entitled "Energy Security". NHTSA believes that the following quotation from that report represents a useful summary of the current energy situation and national security:

> Although dependence on insecure oil supplies is * * * projected to grow, energy security depends in part on the ability of importing nations to respond to oil supply disruptions; and this is improving. The decontrol of oil prices in the United States, as well as similar moves in other countries, has made economies more adaptable to changing situations. Furthermore, the large strategic oil reserves that have been established in the United States (and to a lesser extent, in other major oil-importing nations) will make it possible to respond far more effectively to any future disruptions than has been the case in the past.
>
> The current world energy situation and the outlook for the future include both opportunities and risks. The oil price drop of 1986 showed how consumers can be helped by a more competitive oil market. If adequate supplies of oil and other energy resources continue to be available at reasonable prices, this will provide a boost to the world economy. At the same time, the projected increase in reliance on relatively few oil suppliers implies certain risks for the United States and the free world. These risks can be summarized as follows: If a small group of leading oil producers can dominate the world's energy markets, this could result in artificially high prices (or just sharp upward and downward price swings), which would necessitate difficult economic adjustments and cause hardships to all consumers.
>
> Revolutions, regional wars, or aggression from outside powers could disrupt a large volume of oil supplies from the Persian Gulf, inflicting severe damage on the economies of the United States and allied nations. Oil price increases precipitated by the 1978–79 Iranian revolution contributed to the largest economic recession since the 1930's. Similar or larger events in the future could have far-reaching economic, geopolitical, or even military implications.

B. Effect of Other Federal Standards

In determining the maximum feasible fuel economy level, the agency must take into consideration the potential effects of other Federal standards. The following section discusses other government regulations—both in process and recently completed—that may have an impact on fuel economy capability.

1. NHTSA Standards

Several relatively recent changes in Federal safety and damageability requirements could have an effect on CAFE. These include a May 1982 amendment to the Part 581 Bumper Standard reducing the standard's impact protection requirements and thereby permitting weight savings; an amendment to the agency's lighting standard, which permits greater aerodynamic efficiency; and implementation of automatic restraint requirements.

The bumper standard was amended for 1983 and later model years to provide for a 2½ mph impact test speed (compared to an earlier 5 mph impact test speed). The regulatory analysis accompanying this rule noted that manufacturers could realize a weight savings of from 15 to 33 pounds. This could produce a gain in fleet average CAFE capability of 0.2 mph to 0.5 mph. In the past, however, the agency has not factored in any CAFE advantage, because manufacturers have indicated that they continue to comply, on a voluntary basis, with the 5 mph standard. The agency endorses the voluntary use of 5 mph bumper systems.

The agency modified its Federal Motor Vehicle Safety Standard 108, Lamps, Reflective Devices, and Associated Equipment, to permit the use of replaceable light source headlamps, smaller sealed beam headlamps, and lower headlamp mounting height. The PRIA concludes that the ability to redesign headlamps in this way could result in a 2 to 3 percent improvement in aerodynamic drag. This in turn could produce a 0.4 to 0.9 percent improvement in fuel economy. For a 27.5 mpg fleet, this would equate to a 0.11 mpg to 0.25 mpg improvement in CAFE if all vehicles in that fleet employed the new lamp designs. Both Ford and GM are making extensive use of this new flexibility.

However, GM also notes in its August 1988 docket submission that composite headlamps have been partially responsible for its "C" and "H" carlines moving into a higher EPA test weight category, producing a negative CAFE effect. The agency seeks specific data concerning any negative impact manufacturers believe using this design flexibility has on CAFE levels.

A July 1984 amendment to Federal Motor Vehicle Safety Standard 208, Occupant Crash Protection, specified

the phase-in of automatic protection requirements beginning in model year 1987, with 40 percent phased in by MY 1989 and 100 percent implementation by MY 1990. The agency has developed its own estimate of the average incremental weight of automatic restraint systems. As noted in the PRIA, the agency's current best estimates of typical system incremental primary weights over manual belts are as follows: Front seat airbag, approximately 21 pounds; non-motorized automatic belts, approximately 11 pounds; and motorized automatic belts, approximately 15 pounds. Neither GM or Ford claimed during the Standard 208 rulemaking a specific weight penalty associated with these 208 requirements. Both stated, however, that there would be weight increases, and depending on the success or failure of weight-reducing efforts, as well as some weight-increasing pressures (options packages), that it is not unlikely that certain vehicles equipped with automatic restraints could result in the vehicle being placed in the next higher test weight class. This would have a negative effect on fuel economy. The agency seeks specific information from manufacturers to the extent the information demonstrates specific net weight effects of this standard.

On January 27, 1988, the agency published a proposed rule (53 FR 2239) to upgrade its test procedures and performance requirements for side impact protection for passenger cars. The agency is focusing on two ways of improving the side impact performance of passenger cars: Adding padding on the door and increased structure to reduce intrusion. Specific weight penalties are not known yet, and will depend on such factors as final performance requirements, chosen countermeasure, and baseline vehicle performance. The agency has not considered any negative effect of this proposed standard on CAFE performance, since any final rule on this subject would not apply to the model years under consideration in this rulemaking.

On June 16, 1987, the agency published an advance notice of proposed rulemaking (52 FR 22818) requesting comments on the possible requirement to install lap/shoulder belts in rear seating positions of passenger cars, multipurpose vehicles and small buses. The agency anticipates that any additional weight penalty for this requirement would be minimal, with the current estimate of 0.6 pounds for each outboard seat and 2.4 pounds for the center seat. The agency has not considered this weight penalty in its evaluation of fuel economy and notes that essentially all manufacturers indicate that they will achieve voluntary compliance with this requirement for all of their passenger cars by MY 1990.

2. EPA Noise Standards

The agency is not aware of any plans on the part of the Environmental Protection Agency to promulgate noise regulations during the time period under discussion. Accordingly, no fuel economy penalties from noise regulations have been forecast.

3. Emissions Standards

EPA has not announced any plans to modify its current exhaust emission control requirements for hydrocarbons, carbon monoxide and oxides of nitrogen. Therefore, the agency has not considered any further impacts on fuel economy from control of these pollutants. As discussed in the PRIA, the agency has analyzed previously the effects of the current requirements on fuel economy.

Also discussed in the PRIA is EPA's tightening control of particulate matter that became effective in MY 1987. While this requirement applies to all vehicles, the only current production powerplant which will have difficulty meeting this requirement is the diesel engine. EPA has indicated that there is a 1 to 2 percent fuel economy penalty for diesel powered vehicles which require a particulate trap to comply with the standard; however, the agency believes that only a very small fraction of the diesel vehicles (those with larger displacement engines) will need traps for compliance.

In July 1987 EPA issued a proposed rule on the on-board control of refueling emissions. The proposal would limit gasoline vapor emissions to 0.10 grams of vapor per gallon of dispensed fuel. The agency has not taken this future rulemaking into its estimates of CAFE levels for two reasons. First, the final rule, when issued, will not take effect until two model years after that point, which is beyond the model years that are the subject of this rulemaking. And second, the real weight impact is not clear. EPA estimates that this regulation would add about 4–5 pounds to a vehicle, which could reduce the average Ford or GM fleet CAFE by 0.04 mpg. There is additional concern that this requirement could affect compliance with the exhaust emissions requirements and degrade fuel economy. This may happen because canister purging may occur when the engine is least likely to be able to compensate for it. Ford also claims that the increase in test fuel volatility (RVP) will increase HC and CO emissions.

The California Air Resources Board (CARB) has adopted a new requirement which will require 50 percent of all MY 1989 light duty passenger cars and 90 percent of MY 1990 passenger cars to meet a 0.4 gm/mi NO_x standard. GM has indicated that this requirement will result in a 4 to 5 percent negative impact on the fuel economy of approximately 300,000 of its vehicles. Ford has not claimed specific CAFE losses due to the California NO_x requirements. Half of all vehicles certified to the Federal NO_x standard, are already below the California standard of 0.4 gm/mi level. While they may not be far enough below to ensure compliance, CARB believes that its standard can be met with little or no degradation in fuel economy using refined emission control technology calibrations and higher catalyst loadings. NHTSA does not see whatever small penalty there may be while manufacturers gain experience certifying at this new level, as significant or long-lasting.

4. EPA Test Procedure

The Environmental Protection Agency published a final rule on July 1, 1985, providing CAFE adjustments to compensate for the effects of past test procedure changes (See 50 FR 27172). The final rule adopted a formula approach for calculating CAFE adjustments. The manufacturer projections discussed above include the effect of the EPA test adjustment credit. Due to the formula approach, the specific value of the credit may vary for different model years and among manufacturers. A typical credit for the model years in question would be 0.2–0.3 mpg.

C. Industry Capability: Technological Feasibility and Economic Practicability

1. Manufacturer CAFE projections

In response to its questions published in the Federal Register, the agency received comments from 11 manufacturers, the Competitive Enterprise Institute, and one member of Congress. The agency submitted additional questions to six manufacturers, who responded in May of this year. GM and Ford both project falling short of the 27.5 mpg standard for MYs 1989–90, for their domestic fleets, although GM's April 1988 comments indicate that it will achieve 27.8 mpg in MY 1988. Chrysler indicates that it will achieve or exceed the 27.5 mpg CAFE level for MYs 1989–90, with projections of 27.8 mpg for MY 1989 and 27.9 mpg for

MY 1990. In addition, many importers (those which specialize in smaller vehicles) currently have fleets above the CAFE statutory standard of 27.5 mpg, including: Mazda, Subaru, Suzuki, Toyota, Volkswagen, Mitsubishi, Nissan, Isuzu, Yugo, Honda, and Hyundai. (This also is true of GM's and Ford's imported passenger fleets, which are required by the statute to meet the CAFE standard separately from their domestic fleets.)

Manufacturers indicating that they may not meet the CAFE standard of 27.5 mpg in MYs 1989 and 1990 include Ford and GM (domestic fleets) and several limited product-line manufacturers, including Volvo, Saab, Mercedes-Benz, Jaguar, Porsche, BMW, Austin Rover, and Peugeot. GM, Mercedes-Benz, and Austin Rover each submitted a petition to lower the standard. The remaining foreign manufacturers are all members of AIA, which also submitted a petition to lower the standard.

Since either Ford or GM alone would constitute a substantial share of the market, and both manufacturers project MYs 1989–90 CAFE levels below 27.5 mpg, the agency focused on their projections in its analysis of industry projections.

Ford provided in its April 12, 1988, submission an analysis of how its earlier projections of 27.6 mpg for MY 1989 and 27.7 mpg for MY 1990 projected on October 23, 1985, had declined to the present estimates of 26.6 mpg for both years. The principal reason for the decline is attributed to technical changes, primarily weight increases (due to occupant protection systems required by Standard 208; see discussion in previous section of this Preamble) and lower than expected fuel economy of several series. Ford has partially offset these losses, however, by implementing some small engine improvements and achieving weight reduction in other models. Sales mix shifts have resulted in a decrease in CAFE, as has decreased marketing efforts and delays in product introduction. Ford identifies several risks for its projections, and offsetting opportunities.

As indicated previously, GM characterizes its projected MY 1988 CAFE of 27.6 mpg as a surprise. While this performance can be seen as prima facie evidence that GM is making reasonable efforts to achieve 27.5 mpg, the achievement also raises the issue of why achieving 27.5 mpg is not feasible for MYs 1989 and 1990 as well. GM indicates that the unexpected MY 1988 CAFE level was the result of unanticipated fuel economy performance in EPA tests, which cannot be considered necessarily repeatable, and the extended model year for the Beretta and Corsica.

In fact, GM indicates that its CAFE level will drop over the next two years, from 27.6 mpg in MY 1988, to 27.1 mpg in MY 1989 and 26.9 mpg in MY 1990. GM identified several reasons for this drop in its projected CAFE, including continued growth in demand for larger cars and higher performance (ascribed to lower gasoline prices) and import competition with small cars.

In response to an additional request from the agency, GM submitted detailed variance analyses to explain GM's efforts in attaining the statutory CAFE compliance level. GM provided the agency with specific analyses for different mpg changes, model mix changes and engine mix changes. Examples of the types of changes which result in GM projecting a drop in its fleet's CAFE for MYs 1989–90 include the following:

GM projects a positive net CAFE change due to all model mix shifts between the 1988 and 1989 model years of 0.01 mpg. GM indicates that the largest effect in this category is due to the discontinuation of its "G" models. For MYs 1989–90, GM indicates a negative net CAFE change of 0.06 mpg due to model mix shifts, the details of which were submitted under a claim of confidentiality.

GM also provided details on changes in its CAFE projections based on engine mix shifts and mpg changes. GM describes changes to components and systems to improve the engine quality and reliability, and performance. Changes include technology updates to the fuel injection systems, the addition of newer, high technology engines, increased V–6 volume, and other changes in response to indications of consumer preference.

NHTSA is in the process of analyzing the manufacturers' MYs 1989–90 CAFE projections. Among other things, the agency is attempting to answer the following questions:

9. Both GM and Ford have exceeded a number of the MYs 1986–88 CAFE projections they provided to the agency during the rulemakings for those model years. For example, GM exceeded its MYs 1986–87 projections by 0.3 mpg and 0.4 mpg, respectively, and now expects to exceed its MY 1988 projection by 0.7 mpg. The agency requests information to help it understand why the manufacturers exceeded prior projections, and whether the same types of factors are likely to result in the current MYs 1989–90 projections being exceeded.

10. To what extent do the manufacturers' current MYs 1989–90 CAFE projections reflect the effects of the 1986 fall in gasoline prices? What evidence is available concerning whether that drop in gasoline prices affected consumer demand during MYs 1986–88? In answering this question, please address the fact, noted above, that actual CAFE levels for MYs 1986–88 in some cases exceeded manufacturer projections. Is the effect of the 1986 fall in gasoline prices on consumer demand likely to be the same in MYs 1989–90 as for previous model years? If not, why?

11. What effect is import competition likely to have on the domestic manufacturers' CAFE levels for MYs 1989–90, as compared to recent model years? To the extent that there may be increased penetration of small import cars, how would this affect GM's and Ford's domestic CAFE values? To the extent that import manufacturers are importing larger vehicles, how would this affect GM's and Ford's domestic CAFE values? In addressing these questions, please discuss which of GM's and Ford's domestic models, as opposed to import models, compete with small and large import cars.

While the agency has not completed its analysis of manufacturer projections, it believes that the maximum feasible CAFE for MYs 1989–90, without unreasonable risk to any manufacturer with a major share of the market, is at least 26.5 mpg.

2. Possible Additional Actions To Improve MYs 1989–90 CAFE

In the past, the agency's rulemaking record has included discussions of technological improvements to the engine and transmission, as well as weight reduction, and aerodynamic and rolling resistance reduction as the prime sources for fuel economy improvements. From the entire fleet perspective, technological changes have been impressive: Over the past 10 years, the average passenger car weight has declined by 800 pounds, the average engine displacement has dropped from 280 CID to 162 CID, front-wheel drive has increased from 7 percent to 75 percent of the new car fleet, automatic transmissions with overdrive and/or lock-up torque converter clutches have increased from less than 1 percent to 65 percent and fuel-injected engines have increased from 5 percent to 72 percent.

For MYs 1989–1990, as indicated in the rulemaking record of this and prior CAFE rulemaking proceedings, there are a number of fuel-efficiency enhancing methods that are not fully utilized throughout the GM and/or Ford fleets. These include further weight reduction; front-wheel drive; four-speed automatic

transmissions; engine improvements such as advanced electronic control of engines, reduced friction, and lean-burn fast-burn combustion; reduction of parasitic losses; and aerodynamic and rolling resistance reductions. All of these methods have previously been identified by the agency as feasible, and are partially utilized by the GM and Ford fleets, as well as by other manufacturers.

As a practical matter, it is not feasible for manufacturers at this point to implement significant technological changes for MY 1989 or MY 1990, due to lack of leadtime. This would not prevent the agency from maintaining the standard at 27.5 mpg, however, if it cannot make a determination of reasonable efforts, for the reasons discussed previously. The agency is analyzing whether additional, minor technological changes could be made during the 1989 model year or for MY 1990.

In considering whether further technological changes can be made for MYs 1989–90, NHTSA requests information or comments on the following questions:

12. What is the feasibility (bearing in mind both technological feasibility and economic practicability) of the various fuel-efficiency enhancing technologies, including but not limited to those identified in the agency's PRIA, for improving manufacturers' CAFE to or nearer to 27.5 mpg for MY 1989 and MY 1990? In answering the question, please address the potential penetrations of those technologies during this time period. If not feasible, why not? What are the leadtimes involved in making such technological changes?

13. To what extent, if any, would fuel economy improvements adversely affect consumer choice of vehicles or engines? If the record shows that it would adversely affect consumer choice, how should the agency take account of the effect of such restrictions in evaluating possible improvement of CAFE by additional technological means? Please address this issue with respect to the various available fuel-enhancing technologies, e.g., diesel engines, changing from rear-wheel drive to front-wheel drive, performance reductions, etc. and the legislative history indicating Congress' intent that consumer choice not be unduly limited. The agency seeks specific comment from the public on the trend toward increasing acceleration performance and whether manufacturers have any role in stimulating this trend through advertising or marketing strategies.

In previous rulemakings to lower the CAFE standard, the agency has evaluated the use of marketing efforts and/or product restrictions to improve CAFE. In the past, the agency has concluded that GM and Ford both have made efforts to promote the sales of fuel-efficient cars and determined that the manufacturers have undertaken extensive and significant marketing efforts to shift consumers toward their more fuel-efficient vehicles and options.

The agency also has stated previously that it believes that the ability to improve CAFE by additional marketing efforts is relatively small. As a practical matter, marketing efforts to improve CAFE are largely limited to techniques which either make fuel-efficient cars less expensive or less fuel-efficient cars more expensive. Moreover, the ability to increase sales of fuel-efficient cars largely relates to either increasing market share at the expense of competitors or pulling ahead a manufacturer's own sales from the future. A factor which makes it difficult for the domestic manufacturers to sell domestically-produced fuel-efficient cars is the growing competition of lower-priced small cars from newly developing countries such as Yugoslavia and South Korea.

Another consideration in this area is that the manufacturers' success in improving the fuel-efficiency of large cars has itself made it more difficult to sell smaller cars. The reason for this is that there are diminishing returns in terms of greater fuel economy from purchasing small cars as the fuel efficiency or larger cars increases. Similarly, as gasoline prices have declined, there are diminishing returns to the consumer from purchasing more fuel-efficient vehicles.

There is a problem with pulling ahead sales, as mentioned above, which consists of the manufacturer's CAFE for subsequent years being reduced. For example, if a manufacturer increases its MY 1988 CAFE by pulling ahead sales of fuel-efficient cars from MY 1989, the MY 1989 CAFE will decrease, compared with the level it would have been in the absence of any pull-ahead sales attributable to marketing efforts. For this reason, a manufacturer cannot continually improve its CAFE simply by pulling ahead sales.

The agency is not sure that manufacturers can improve significantly their CAFEs by increased marketing efforts. In a follow-up question to six manufacturers, the agency asked for details of specific marketing efforts undertaken during MYs 1987–88 to encourage the sale of more fuel efficient cars or engine options. NHTSA also asked for the financial and CAFE effects of these activities. Of the manufacturers asked, only one (Volvo) indicated that it did not spend its marketing money on promoting sales of its more fuel-efficient models. Volvo indicated that since its two carlines achieve similar CAFE, it is not an appropriate use of marketing funds. Volvo did indicate, however, that it provides some pricing incentives to encourage the sale of its more fuel-efficient vehicles (those with manual transmissions).

Ford and GM both presented specific information concerning their marketing programs. GM indicates that its total cost for numerous incentive programs for its fuel-efficient cars during MYs 1987–88 was over $2.0 billion. Ford indicates that its expenditures for its marketing program approaches $3.0 billion for the years 1982–1988. Ford also stated that its marketing support costs are disproportionately greater for its fuel-efficient models than its large-luxury models.

In considering whether marketing efforts can be used to improve CAFE beyond the levels projected by the manufacturers, NHTSA requests comments on the following questions:

14. Please quantify any financial or CAFE effects of marketing programs undertaken during MYs 1987–88 to encourage the sale of more fuel-efficient cars or engine options. (Describe the specific marketing programs undertaken.) What relevance, if any, does the MY 1987–88 experience have to what can be done for MYs 1989–90?

In looking at the potential methods for improving CAFE, the agency also has recognized in the past that manufacturers could improve their CAFE by restricting their product offerings, e.g., deleting less fuel-efficient car lines or dropping higher performance engines. However, the agency also acknowledges that, to the extent these product restrictions result in net sales losses, they could have a significant adverse economic impact on the industry and the economy as a whole, and could run counter to the statutory criterion of economic practicability and the Congressional intent that the CAFE program not unduly limit consumer choice.

VIII. Determining Maximum Feasible

As discussed above, section 502(a)(4) provides that the 27.5 mpg standard can be amended if the agency determines that some other standard represents the maximum feasible average fuel economy level. Such an amendment will be made only if the agency first makes a determination that the manufacturers made reasonable efforts to meet the standard. If the manufacturers'

compliance plans were overtaken by unforeseen events, this determination includes consideration of the efforts made by manufacturers to offset the effects of those events. In determining maximum feasible, the agency considers the four factors of section 502(e): Technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of the nation to conserve energy. Also, as discussed above, the agency takes industrywide considerations into account in determining the maximum feasible average fuel economy level.

A. Interpretation of Feasible

Based on dictionary definitions and judicial interpretations of similar language in other statutes, the agency traditionally has interpreted "feasible" to refer to whether something is capable of being done, taking into account the four statutory criteria mentioned above. The statute does not elevate any one of these criteria above the others, nor does it provide guidance to the agency in weighing any of these criteria more heavily than any others. For example, the agency's determination of the "maximum feasible" standard cannot be that level which is merely the maximum technologically feasible without regard to the economic practicability of such a level.

B. Economic Impacts of Not Amending the 27.5 mpg Standard

As the agency has stated in previous rulemakings, the determination of a maximum feasible level is not a cut and dry mathematical formula, but rather, a series of decisions based on interrelated trends, projections and factors. The agency's analysis of economic impacts is based on a preliminary assessment of GM's and Ford's capabilities, and is discussed in the PRIA.

In the past, the record of the rulemakings has shown that a CAFE standard set above those companies' capabilities could have an adverse effect on production, and hence employment, for either or both companies. For example, in the MY 1986 rulemaking, GM stated that it "must contemplate the possibility of restricting the production of many of [its] more popular models" (GM statement of August 8, 1985, public hearing). Similarly, in the MYs 1987–88 rulemaking, GM claimed that in order to remain in compliance, it "would have to both curtail drastically production of its fuel efficient cars and attempt to increase greatly its small car sales * * * [N]et GM production cuts could be more than 1 million cars" (GM submission of March 24, 1986).

While GM indicated in previous years that it "*must* contemplate" product restrictions (emphasis added) and "*would* have to curtail * * * production" (emphasis added), its statements in this rulemaking to date are less clear on this issue. For example, in its April 11, 1988, submission, GM only claimed that it "*may* need to restrict production" (emphasis added), and in its August 10, 1988, submittal GM stated that "product restrictions provide one means of assuring compliance." At the same time, that submission discussed other, technological means of complying with a 27.5 mpg standard. In summarizing its CAFE compliance planning, GM stated that with projections beneath 27.5 mpg, meeting the standard in a given year depends on "*either*" (a) product restrictions, with concomitant job losses to GM and its suppliers of 60,000 for MY 1989 and 110,000 in MY 1990 (with higher job loss estimates if minimum uncertainties are considered), "*or*" (b) recovery actions involving significant costs and marketing risks. (Emphasis added.) That company also stated that the latter approach *could* produce job impacts as a consequence of lower sales. (Emphasis added.) NHTSA believes that it is unclear from GM's submission the extent to which it believes jobs are at issue. This notice should not be viewed as an agency conclusion that the employment loss figures cited by GM, or any other employment losses, are likely. The agency will continue to analyze this issue during the comment period.

Ford indicates that it intends to comply with the statutory CAFE level of 27.5 mpg for MYs 1989–90 through the use of credits earned for exceeding the standard in other model years. Ford notes, however, that if sufficient credits are not available in the specified time period, there would be a significant increase in its compliance costs. The lack of lead-time as well as the lack of identifiable technology would force Ford to implement a more aggressive forced sales mix restrictions.

In analyzing possible employment impacts, NHTSA believes that it is obvious that some product decisions to restrict options might have a limiting effect on consumer choice, but would not necessarily have an adverse net employment effect. While the agency would need to consider whether product decisions to limit options would unduly limit consumer choice, the agency also believes it is important to keep separate in its analysis those product restrictions that would have adverse U.S. employment effects and those that might not. The agency also notes a trend in the industry (presumably unrelated to CAFE) to limit the number of consumer options on some models, generally by making previous options standard or only offering options in packages, in order to enchance competitiveness by introducing efficiencies and streamlining production. These decisions are described in business journals as related to efforts to increase market share which, if successful, should have a positive effect on U.S. employment. NHTSA requests commenters that address product restrictions to indicate whether the restrictions being discussed necessarily have an associated employment effect, and why.

As the agency analyzes possible employment impacts, it is attempting, among other things, to answer the following questions:

15. To what extent, if any, are U.S. jobs affected by the level of the MY 1989–90 CAFE standards and thus at issue in this rulemaking? If restricting products (with concomitant job losses) is one of a number of compliance options available to a manufacturer, how should the agency consider that option as compared to other options? To what extent would potential compliance actions other than restricting products (including "recovery" actions) affect jobs? Would such actions affect the competitiveness of the domestic industry? If so, would this have a negative impact on jobs? Would some potential compliance actions, such as marketing efforts to sell a greater number of U.S.-made smaller, more fuel-efficient cars, have a positive impact on U.S. jobs?

16. As discussed in connection with analyzing manufacturer CAFE projections, both GM and Ford have exceeded a number of the MYs 1986–88 CAFE projections they provided to the agency during the rulemakings for those model years. During those rulemakings, the manufacturers also provided estimates of job losses that would result from exceeding their projections. The agency requests information to help it understand how the manufacturers exceeded prior projections without apparent job losses, and whether the same types of factors are relevant to MYs 1989–90.

The agency also looks at the effect on gasoline consumption of a different CAFE standard. The per-vehicle present discounted value of lifetime fuel costs for a MY 1989 passenger automobile with a fuel economy level of 27.5 mpg is $3,237. If this same car achieved a fuel economy level of 27.0 mpg, it would add

$60 to the lifetime operating cost of the vehicle. If this same car achieved a fuel economy level of 26.5 mpg, an additional $62 would be added to the total operating cost of the vehicle. The financial significance to the consumer of these incremental changes in fuel economy has declined since the early 1970's as the fuel efficiency already achieved by the overall vehicle fleet has increased dramatically.

The precise magnitude of possible energy savings associated with retaining the 27.5 mpg standard versus establishing a lower standard is uncertain. The maximum hypothetical difference in gasoline consumption between GM and Ford achieving 26.5 mpg in MY 1989–90, as compared to those companies achieving 27.5 mpg, would be 1.8 billion gallons of gasoline over the life of the MYs 1989–90 fleets. This would represent a maximum yearly impact on U.S. gasoline consumption of 238 million gallons, or roughly 0.3 percent of total annual automobile consumption. In terms of U.S. petroleum consumption, it would amount to a maximum yearly increase of 0.09 percent.

The actual energy savings could be less if certain manufacturers were able to meet the 27.5 mpg standard only by restricting sales of their larger cars. In that event, consumers desiring such vehicles might tend to keep their older, larger cars in service longer, which generally are less fuel-efficient than their new counterparts; or they might purchase similar vehicles from manufacturers which did not face CAFE constraints; or they could purchase larger pick-up trucks and vans (which are less fuel-efficient, but not subject to the passenger automobile CAFE standards) to obtain the room, power and load-carrying capacity they desire. Those actions would have adverse (or at least neutral) effects on actual fuel consumption, which could offset in whole or part the theoretical energy savings associated with a higher passenger vehicle CAFE standard.

C. Consideration of Standards Above GM's and/or Ford's Capability

In the MY 1987–88 rulemaking, NHTSA considered, as part of taking industrywide considerations into account, whether a standard could or should be set at levels above the capabilities of GM and/or Ford. The agency concluded that since GM then produced more than 40 percent, and Ford approximately 18 percent, of all cars sold in the U.S., CAFE standards set at the level of the least capable of these manufacturers represents an appropriate balancing of "the benefits to the nation of a higher average fuel economy standard against the difficulties of individual manufacturers." NHTSA also stated that given GM's and Ford's large market shares, it believed that a standard set at a level above either company's capability would be inconsistent with taking industrywide considerations into account.

The MYs 1987–88 decision was made in the context of a determination that both GM and Ford had made reasonable efforts to achieve 27.5 mpg CAFE for those two model years. As discussed above, NHTSA is still in the process of analyzing whether it can make such a determination for GM and Ford for MYs 1989–90. There is thus a possibility that the agency will conclude that one manufacturer made reasonable efforts to achieve 27.5 mpg and that the other did not. Should this occur, it is also possible that an approach of not setting a standard at a level above either company's capability could result in the company which did *not* make reasonable efforts driving the level of the standard downward.

As discussed above, the agency has previously concluded that reducing a standard notwithstanding the absence of reasonable efforts by the industry would be an abuse of discretion. Moreover, the Court of Appeals has stated that lowering the standard whenever the larger manufacturers assert current inability to meet the standard would, without doubt, completely vitiate the statutory scheme. NHTSA's approach of analyzing reasonable efforts for purposes of deciding whether to exercise its discretion to amend a standard and then following its traditional approach of analyzing maximum feasibility as of the time of the amendment for purposes of setting the new standard produces results clearly consistent with the statutory scheme so long as either all, or none, of the larger manufacturers have made reasonable efforts to achieve 27.5 mpg CAFE for a particular model year. NHTSA notes, however, about the possible result where the capability and reasonable efforts of one of the larger manufacturers "opens the door" for setting a new standard, and the lower capability of another larger manufacturer which has not made reasonable efforts drives the level of the standard downward. The agency requests comments on the following question:

17. If the capability and reasonable efforts of one of the larger manufacturers justifies an amendment to lower the 27.5 mpg standard, and another larger manufacturer which may not have made reasonable efforts to achieve 27.5 mpg CAFE for the model year in question (whether because it decided to utilize the statute's flexibility related to credits or for any other reason) has a lower capability which could drive the level of the standard downward, how should the agency consider this issue in setting the new standard at the "maximum feasible average fuel economy level"?

IX CEI Petition

CEI's petition requested, based on safety considerations, that NHTSA set the MY 1989–90 standards at a "nonconstraining" level, i.e., a level at or below the CAFE that manufacturers would achieve in the absence of any regulatory program. The petitioner argued that larger cars are generally more crashworthy than smaller cars, and that downsizing is a major means by which carmakers improve the fuel economy of their product. CEI argued that to the extent that a particular model year's CAFE standard mandates a level of fuel economy above that which would otherwise be achieved, it diminishes the crashworthiness of the new car fleet. The petitioner cited a report by Robert W. Crandall of the Brookings Institution and John D. Graham of the Harvard School of Public Health in support of its contention.

NHTSA believes that setting CAFE standards deliberately low enough to be "nonconstraining," as requested by CEI, would be inconsistent with EPCA's requirements and thus outside the agency's legal authority. As discussed above, in 1975, Congress set the 27.5 mpg standard for MY 1985 and subsequent years by statute. The 27.5 mpg standard represented a long-term goal, requiring manufacturers to essentially double their CAFE. While the Act provides NHTSA with authority to amend the standard for particular model years, any amended standard must be at the "maximum feasible" level. Clearly, Congress intended the CAFE program to have a substantial impact on the cars being produced.

While NHTSA shares CEI's objection to the CAFE program (albeit for different reasons), the agency cannot unilaterally alter or ignore the statute. As noted earlier, NHTSA has asked Congress to repeal the law; but until then, we must administer it as written, despite our policy views. Any methodology of setting standards deliberately to be at or below the level that would be achieved in the absence of the CAFE program, whether for safety considerations or any other reason, would violate the requirement for maximum feasible

standards and vitiate the statutory scheme.

On the other hand, NHTSA believes that it is appropriate to consider safety in deciding whether to exercise its discretion to amend CAFE standards and also in determining maximum feasible fuel economy. NHTSA notes that in proceeding to the final step in its selection of the level of the MY 1981–84 passenger car CAFE standards, it dropped from further consideration the highest schedule of standards, i.e., the one based on the use of diesels, mix shifts and certain other actions. The agency did so in part because it desired further information on health effects of diesel particulates. 42 FR 33454–45.

NHTSA also notes that it has been argued that some recent product decisions that tend to *lower* CAFE may have adverse safety impacts. These observers have cited such things as recent significant increases in acceleration and performance of certain vehicles. In analyzing possible safety impacts, the agency must, of course, consider possible impacts in both directions.

In analyzing this issue, the agency requests information or comments on the following question:

18. Would lower passenger car CAFE standards for MYs 1989–90 have any impact, positive or negative, on safety? Why? The agency is particularly interested in comments from manufacturers as to whether and how they would change their product plans in response to a lower standard, i.e., whether weight would be added, whether additional safety features would be added and, if so, for which models; the quantitative impact such features would have on safety; and why the 27.5 mpg standard prevents or discourages them from offering such features. Are there product decisions that are adverse to safety that would be encouraged by a lower standard?

X. Comment Period

NHTSA is providing different comment periods for the proposed MY 1989 and MY 1990 standards. An abbreviated comment period is provided for the proposed MY 1989 standard, while a 60 day period is provided for the proposed MY 1990 standard.

The comment period is shortened for MY 1989, due the limited remaining time for amending that standard. NHTSA notes, however, that on March 16, 1988, it published a request for comments relating to one of the petitions requesting a reduction in the MY 1989–90 CAFE standards. That notice specifically sought information concerning manufacturer efforts at meeting the CAFE standards, manufacturer product plans, and projected CAFE levels. Thus, the public has had a previous opportunity to submit comments relating to a possible reduction in the MY 1989 CAFE standard, and has been aware for many months of the possibility of rulemaking in this area.

NHTSA also recognizes, however, that there may be some persons or organizations commenting for the first time. We encourage every interested person to comment, whether or not the submitter responds to all of the questions posed. The agency requests that the commenter identify the numbered question he or she is addressing. Each comment will be reviewed and considered by the agency.

NHTSA has stated previously that amendments reducing a standard for a particular model year may be made until the beginning of the model year, but not after that time. See 49 FR 41250, 41254–6 (October 22, 1984). While the agency has not established a particular date as the beginning of the model year, it has stated that the model year begins in the fall of the preceding calendar year. Moreover, in *In Re Center for Auto Safety*, 793 F.2d 1346 (D.C. Cir. 1986), the Court of Appeals stated that "the model year is traditionally thought to start approximately October 1st." That court also concluded that in amending the MY 1985 light truck CAFE standards on October 16, 1984, the agency failed to amend the standards before the start of that model year. In light of this decision, NHTSA believes that in order to be timely, any decision regarding the MY 1989 standard should be made and issued by the beginning of the model year, ordinarily thought to be the beginning of October.

EPCA does not establish a specific minimum notice period. Accordingly, NHTSA has established a reasonable comment period, based on the circumstances. The agency believes that the comment period for MY 1989 is sufficiently long to provide a full opportunity for meaningful participation by the public, and that a longer period would make it difficult or impossible to make a final decision in a timely manner. Accordingly, the agency finds good cause for the shortened comment period.

XI. Public Meeting

A public meeting will be held on September 14, 1988, in Washington, DC, at 9:00 a.m. at the U.S. Department of Commerce Auditorium, 14th Street and Constitution Ave., NW., Washington, DC 20591. The agency invites interested members of the public to participate in this meeting and to comment on the full range of issues raised by this proposal, and specifically to respond to the question of whether manufacturers have made reasonable efforts to meet the 27.5 mpg CAFE standard and to the question of the maximum feasible level for MY 1989 and MY 1990.

No opportunity will be afforded the public to directly question participants in the meetings. However, the public may submit written questions to the panel of Federal officials for the panel to consider asking of particular participants. The presiding officials reserve the right to ask questions of all persons making oral presentations.

Persons wishing to make oral presentations at the public hearing should contact Mr. James Jones, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC 20590, (202) 366–4793, by September 9, 1988, so that time limitations (if necessary) and the need for any special equipment, such as projectors, can be discussed and final arrangements can be made. Persons whose presentations will include slides, motion pictures, or other visual aids should submit copies of them for the record at the meeting. Oral presentations will be limited to between 5 and 15 minutes, depending on the number of witnesses. If the number of requests for oral presentation exceeds the available time, the agency may ask prospective witnesses having similar views or belonging to similar types of groups or occupations to combine their presentations.

Persons making oral presentations are requested, but not required, to submit 25 written copies of the full text of their presentation to Mr. James Jones no later than the day before the hearing. If time permits, persons who have not requested time, but would like to make a statement, will be afforded an opportunity to do so at the end of the day's schedule. Copies of all written statements will be placed in the docket for this notice. A verbatim transcript of the public hearing will be prepared and also placed in the NHTSA docket as soon as possible after the hearing. A schedule of the persons making oral presentations at the hearing will be available at the designated meeting area at the beginning of the public hearing.

XII. Written Comments

Comments are requested in three specific areas: reasonable efforts, jobs, maximum feasible capability, and safety effects of the CAFE program. The agency has discussed in more detail what it needs in each of the preamble sections dealing with these issues.

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Interested persons are invited to submit comments on the proposal, regardless of whether they also present oral statements at the September 14 public meeting. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting further the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated in the **DATES:** section of this preamble will be considered, and will be available for examination in the docket at the above address both before and after that date. Because of the short time available to decide whether to issue a final decision for MY 1989, the agency does not expect to be able to consider any late comments. For MY 1990, comments filed after the closing date will be considered to the extent possible. Rulemaking action may proceed at any time after the comment due date. Any comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

XIII. Impact Analyses

A. Economic Impacts

The agency considered the economic implications of the proposed amendment and determined that the proposal is major within the meaning of Executive Order 12291 and significant within the meaning of the Department's regulatory procedures. The agency's detailed analysis of the economic effects is set forth in a Preliminary Regulatory Impact Analysis, copies of which are available from the Docket Section. The contents of that analysis are generally described above.

B. Environment Impacts

The agency has analyzed the environmental impacts of the proposed amendment to the 1989–1990 model year passenger automobile average fuel economy standards in accordance with the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* Copies of the Environmental Assessment (EA) are available from the Docket Section. The agency has tentatively concluded that no significant environmental impact would result from the execution of this rulemaking action. The agency notes, for the first time in this EA, however, that part of its analysis should include the possible effects of the potential increase in carbon dioxide (CO_2) build-up as the result of action lowering the standard (build-up is known as the "greenhouse" effect).

C. Impacts on Small Entities

Consistent with the provisions of the Regulatory Flexibility Act, the agency has considered the impacts this rulemaking would have on small entities. I certify that this action would not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required for this action. No passenger car manufacturer, if subject to the proposed, rule would be classified as a "small business" under the Regulatory Flexibility Act. In the case of small businesses, small organizations, and small governmental units which purchase passenger cars, adoption of the proposed rule would not affect the availability of fuel efficient passenger cars or have a significant effect on the overall cost of purchasing and operating passenger cars.

D. Impact on Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

E. Department of Energy Review

In accordance with section 502(i) of the Cost Savings Act, the agency submitted this proposal to the Department of Energy for review. There were no unaccommodated comments.

List of Subjects in 49 CFR Part 531

Energy conservation, Fuel economy, Gasoline, Imports, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 531 would be amended as follows:

PART 531—PASSENGER AUTOMOBILE AVERAGE FUEL ECONOMY STANDARDS

1. The authority citation for Part 531 would continue to read as follows:

Authority: 15 U.S.C. 2002, delegation of authority at 49 CFR 1.50.

§ 531.5 [Amended]

2. The table in § 531.5(a) would be amended by revising the fuel economy standards specified for MY 1989–90 to the levels determined by the agency to be the maximum feasible average fuel economy level, based on the considerations discussed above.

Issued: August 25, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88–19699 Filed 8–26–88; 8:45 am]

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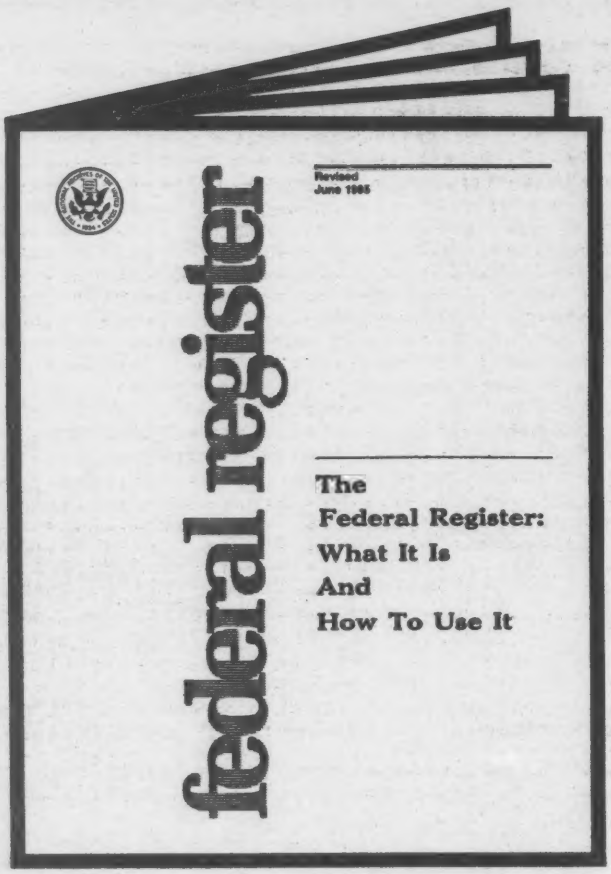

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